In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 711

T. C. FRY, JR., ALIAS MATTHEW BRADY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A pp. 11–42; III 49–80) [1] is reported at 336 F. 2d 1003.

JURISDICTION

The judgment of the court of appeals was entered on August 11, 1964 (III 81). A petition for rehearing was denied on October 21, 1964 (Pet. App. B. p. 43). The petition for a writ of certiorari was filed on November 20, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] Citations are to the certified record filed in the companion case No. 607, This Term. "I" refers to defendant Press's appendix filed below. "II" refers to petitioner Fry's appendix filed below. "III" refers to the government's appendix filed below, supplemented by the proceedings in the court of appeals.

QUESTIONS PRESENTED

1. Whether testimony that numerous complaints were received from victims was properly admissible as background evidence and to show petitioner's knowledge and intent.

2. Whether the government properly questioned the motives for conducting the activities in question from an office in Vermont, rather than from New Jersey where the business had its headquarters and where its warehouse was located.

3. Whether, prior to trial, the counsel for all defendants was properly allowed to withdraw as counsel for petitioner in order to avoid a possible conflict of interest among the defendants.

STATEMENT

Petitioner Fry was a co-defendant of Press, petitioner in No. 607, This Term, and raises the same issues as are presented in No. 607 with one addition. Save for that additional issue, we rely upon our brief in opposition in No. 607.

At arraignment on July 24, 1962, Charles F. Ryan, in open court, entered the appearance of his firm for the defendant (II 1). On December 17, 1962, Mr. Ryan asked leave to withdraw as counsel for petitioner, being of the opinion that some of the defendants, including petitioner, "should have separate counsel" (Pet. App. F. p. 54, II 3). On December 19, 1962, the trial court, finding that there was "a real possibility of a conflict," entered an order allowing counsel to withdraw as to petitioner and others. The court also instructed counsel to tell petitioner to

secure other counsel. It reset the case for trial on February 12, 1963 (Pet. App. F. p. 55; II 5). At trial petitioner was represented by his own counsel. The petitioner points to no instance in the record, and we find none, where he either objected to this procedure or intimated that it caused any problem.

ARGUMENT

The trial judge properly applied the principles of *Glasser* v. *United States,* 315 U.S. 60. There was no reason for the judge to hold a hearing when counsel made his motion to withdraw as counsel for petitioner.' After petitioner obtained his own attorney well in advance of trial, there was no suggestion that former counsel's continued representation of Press would be unfair to petitioner. The present suggestion that petitioner "faced with cross examination by his former counsel did not testify" is an unsupported afterthought. As noted by the court below—"the defenses of Press and Fry, namely, good faith and honest intentions, were complementary" (III 74).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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